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ARTICLES

NEW FINANCIAL REGULATION REFORM: A GOOD MEASURE FOR AFRICAN AMERICANS

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I. INTRODUCTION

On July 21, 2010, United States President Barack H. Obama signed into law what some have called, "the most sweeping overhaul of U.S. financial-market regulations since the Great Depression."[1] The Dodd-Frank Wall Street Reform and Consumer Protection Act was enacted in response to the financial meltdown of 2008.[2] The new law is designed to better protect consumers, empower investors, and bring transparency to a financial sector; which, President Obama stated, was "governed by antiquated and poorly enforced rules that allowed some to game the system."[3]

Of particular significance to African Americans are the modifications to lending practices; the new financial regulations will protect consumers from "the predatory practices of unscrupulous lenders."[4] In fact, the new and beefed up financial regulation will better protect at-risk groups from predatory loans, and regulate payday loans and other alternative banking practices, of which African Americans historically have been the primary target.[5] In 2005 and 2006, the majority of loans issued to blacks were subprime.[6] The Center for Community Change reported that African Americans are three times

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1. Victoria McGrane, Obama Signs Financial Regulation, WALL ST. J. (July 21, 2010), http://online.wsj.com/article/SB10001424052748704684604575381120852746164.html.
2. *Id.*
3. *Id.*
4. Chris Levister, *Landmark Financial Overhaul Will Protect African Americans*, BLACK VOICE NEWS (July 22, 2010), http://www.blackvoicenews.com/news/44746-landmark-financial-overhaul-will-protect-african-americans.html (quoting President Barack Obama).
5. *Id. See also* Charles Lewis Nier, III, *The Shadow of Credit: The Historical Origins of Racial Predatory Lending and Its Impact Upon African American Wealth Accumulation,* 11 U. PA. J.L. & SOC. CHANGE 131 (2007) (discussing the impact of historical and recent issues of discriminatory credit practices).
6. Levister, *supra* note 4.

as likely as whites to finance their homes with subprime loans; this is true even between upper-income blacks and whites.[7]

A History of Discrimination, Disenfranchisement, and Disadvantage

Throughout history, African Americans have been victims of laws that made the dream of home ownership and wealth accumulation more difficult.[8] Now, with the first sitting African American president in this nation's history and on the back of the greatest financial crisis since the Great Depression, the government has pushed through sweeping financial reform. The new regulations are a good measure not just for the American literati but for the people as a whole—including African Americans. As early as the colonial era, laws were passed precluding black enslaved persons from purchasing, acquiring, or owning property.[9] According to ex-slave Harriet Jacobs, "a slave, *being* property, can hold no property."[10] An early Virginia law provided that all property of "'any [N]egro . . . that was not converted by his owner of such slave . . .' would be forfeited to the use of the parish poor."[11] The obstacles to wealth accumulation were not just limited to Negro slaves; free blacks were subject to discrimination, intimidation, and violence.[12] In Salem, Massachusetts, in 1793, residents targeted a "[N]egro hut . . . [and] protest[ed] that such buildings depreciated property, drove out decent residents, and generally injured the welfare of the neighborhood."[13] The notion of blacks bringing down the property value and the idea of *white flight* are not recent issues.[14] "In Columbia, Pennsylvania, a mob of angry whites drove African Americans from their neighborhood and into the surrounding woods."[15] "After order was restored, a group of white leaders met with African Americans to discuss the sale of their property . . . 'as fast as funds could be raised.'"[16]

7. Gregory D. Squires, *Predatory Lending: Redlining in Reverse*, SHELTERFORCE, (ISSUE 139), Jan./Feb. 2005, http://www.nhi.org/online/issues/139/redlining.html.

8. *See* Nier, *supra* note 5.

9. Nier, *supra* note 5, at 132 (citing Senator Barack Obama, Remarks at the Constitution Center: A More Perfect Union (Mar.18, 2008), http://www.constitutioncenter.org/amoreperfectunion/docs/Race_Speech_Transcript.pdf.

10. Nier, *supra* note 5, at 137.

11. THOMAS D. MORRIS, SOUTHERN SLAVERY AND THE LAW, 1619-1860 349 (1996).

12. Nier, *supra* note 5, at 140-41.

13. Nier, *supra* note 5, at 141.

14. *See* Nier, *supra* note 5, at 183.

15. Nier, *supra* note 5, at 142.

16. Nier, *supra* note 5, at 142.

Government-Sponsored Racism

The federal government has often sponsored legislation which had the effect of depriving or at the very least disfavoring African American homebuyers. For example, in 1933, when the Home Owners' Loan Corporation (HOLC) was created under the Federal Home Loan Bank Board, "notions of ethnic and racial worth" were used by appraisers to rate the value of neighborhoods.[17] In Detroit, every African American neighborhood was rated "D" or "hazardous" by federal appraisers.[18] In effect, HOLC was "placing the federal government's stamp of approval on notions of real estate value and race."[19] "Consequently, private banks adopted the HOLC's racially discriminatory policies, thereby institutionalizing and disseminating the practice of racial redlining."[20] This rating system also influenced the "underwriting practices of the Federal Housing Administration (FHA) and the Veteran's Administration (VA)."[21]

The FHA favored the financing of new construction, single-family, detached homes. By 1960, the overwhelming majority of African Americans lived in urban centers.[22] These federal policies disfavored African Americans who resided in city centers and precluded their purchases of existing row houses and attached dwellings from loan eligibility.[23] Additionally, the FHA's "appraisal process was based on the premise that racial segregation was necessary to ensure maintenance of property values."[24] The FHA required a property appraisal from a manual that read: "'If a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes,' [and] appraisers were warned of the dangers of infiltration of 'inharmonious racial groups or nationality groups.'"[25] The FHA's policies influenced private financial institutions who "were reluctant to provide mortgages to areas inhabited by prosperous African Americans and refused to originate any mortgage loans to African Americans seeking to acquire property in the vicinity of white neighborhoods."[26]

From 1930 to 1960, "'fewer than one percent of all mortgages in the nation were issued to African Americans.'"[27] As legal scholar Charles

17. Nier, *supra* note 5, at 175, 177.
18. Nier, *supra* note 5, at 179.
19. Nier, *supra* note 5, at 180.
20. Nier, *supra* note 5, at 180.
21. Nier, *supra* note 5, at 180.
22. Nier, *supra* note 5, at 182.
23. Nier, *supra* note 5, at 182.
24. Nier, *supra* note 5, at 183.
25. Nier, *supra* note 5, at 182-83.
26. Nier, *supra* note 5, at 184.
27. Nier, *supra* note 5, at 185.

Lewis Nier explained, "[w]ith African Americans unable to obtain the same type of financing available to whites from traditional financial institutions, they were forced to rely on less favorable, often predatory, forms of mortgage financing."[28] "The impact of such discriminatory allocation of credit was to suppress home ownership among African Americans" for decades.[29] And while the recent surge of subprime loans at first appeared to increase African American home ownership, gains are decreasing. "By 2004, the black home ownership rate was 49.4 percent; [in] 2008, it dropped to 47.5 percent and may be dipping even lower."[30]

Disparities in Subprime Lending

In most cases, "subprime loans are for persons with blemished or limited credit histories."[31] "The loans carry a higher rate of interest than prime loans to compensate for increased credit risk."[32] Studies disclose that a black homebuyer, "even in upper-income African-American neighborhoods, . . . is one-and-a-half times as likely to have a subprime loan than persons in low-income white neighborhoods."[33] "[T]he Federal Reserve found that African Americans—especially black women—were two to three times more likely to be steered into costly subprime mortgages, even when they had good credit."[34] Additionally, "when these consumers tried to get out of high-rate loans, they often couldn't because the loans had balloon payments or were packed with expensive prepayment penalties."[35]

Part One of this article discusses predatory lending practices and alternative sources of lending or financing historically marketed to African Americans. Part Two discusses the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act) and its implications for African Americans. Finally, this article looks at whether the Act goes far enough.

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28. Nier, *supra* note 5, at 185.

29. Nier, *supra* note 5, at 191.

30. Levister, *supra* note 4.

31. U.S. DEP'T OF HOUS. & URBAN DEV., *Subprime Lending*, http://www.hud.gov/offices/fheo/lending/subprime.cfm (last updated Mar. 24, 2006).

32. *Id.*

33. *Id.*

34. Lynnette Khalfani-Cox, *Financial Reform Bill: What African Americans, Military Families & Minorities Need to Know Now*, BLACKVOICES (July 22, 2010, 1:35 PM), http://www.bvonmoney.com/2010/07/22/financial-reform-what-african-americans-and-minorities-need-to-kn/.

35. *Id.*

II. Predatory Lending Practices & Alternative Loan Products

A. *Reverse Redlining*

In 2007, the National Association for Advancement of Colored People (NAACP), sued subsidiaries of two major United States banks who, they claimed, were guilty of "systematic, institutionalized racism" for disproportionately steering blacks into subprime home loans.[36] "Some allege this disparity to be attributed to subprime lenders purposefully marketing to African-American communities—what some have called reverse redlining."[37] Gregory Squires, in an article published by the National Housing Institute, explained that lenders "will provide loans to these communities, but at elevated higher cost and with less favorable conditions."[38] "Economists at the Office of Federal Housing Enterprise Oversight found that subprime loans are concentrated in neighborhoods with high unemployment rates and declining housing values."[39] Unfortunately, whereas "progress has been made to increase access to capital for racial minorities, low-income families[,] and economically distressed communities, that progress has always come" with a caveat.[40] Although the surfacing of predatory lending practices have made more loans available to African Americans, there are real downsides to such loans, "demonstrat[ing] that the struggle against redlining has not been won, but has simply taken some new turns."[41] For example, "fifty-seven percent of the subprime loans granted in 2006 are [already] in foreclosure or preforeclosure."[42]

Unfortunately, steps taken to increase credit access for African Americans inadvertently created incentives for predatory lending. "The Community Reinvestment Act of 1977, which banned redlining by federally chartered banks and savings institutions, provided incentives for lenders to serve minority and low-income areas."[43] The Fair Housing Act of 1968, which prohibited racial discrimination in home financing, functioned similarly.[44] "FHA insurance and securitization of loans (lenders sell loans to the secondary mortgage market, which

36. E. Scott Reckard, *NAACP Suits Claim African Americans were Targeted for Suprime Mortgages*, L.A. Times (Mar. 14, 2009), http://articles.latimes.com/2009/mar/14/business/fi-blackhousing14.
37. U.S. Dep't of Hous. & Urban Dev., *supra* note 31.
38. U.S. Dep't of Hous. & Urban Dev., *supra* note 31.
39. Squires, *supra* note 7.
40. Squires, *supra* note 7.
41. Squires, *supra* note 7.
42. Levister, *supra* note 4.
43. Squires, *supra* note 7.
44. Squires, *supra* note 7.

packages them into securities to sell to investors) reduce the risk to lenders and increase the capital available for mortgage lending."[45] "In addition, the federal government established affordable housing goals for the two major secondary mortgage market actors, Fannie Mae and Freddie Mac."[46] "Fifty percent of the mortgages they buy must be for low- and moderate-income households."[47] While these actions increased access to capital, they also increased the occurrence of predatory lenders.[48] "Wall Street has become a major player by securitizing subprime loans."[49] "The involvement of investment banks in subprime lending grew from $18.5 billion in 1997 to $56 billion in 2000."[50]

B. *Pay Day Loans:* Legal Loan Sharking

"Payday loans are small loans that a borrower promises to repay out of his or her next paycheck, typically in two weeks."[51] "A $100 loan might carry a fee of $15."[52] Typically, a payday situation works like this:

> The customer writes a check to the lender. The amount on the check equals the amount borrowed plus a fee that is either a percentage of the full amount of the check or a flat dollar amount. The customer must either pay back the full amount of the check and the fees, or pay another fee to extend the loan. The loans too often become cyclical and take much more money to get out of.[53]

"Payday lending is a $40 billion industry made up of roughly 23,000 lenders," such as Ace Cash Express, "Check 'n Go, Advance America, Cash America and Check Into Cash, where a typical borrower takes out between eight and ten loans each year."[54] "[R]esearch from the Center for Responsible Lending found payday lenders are nearly eight times more concentrated in California's Black and Latino neighborhoods as compared to white neighborhoods."[55] The payday loan market "is made up of consumers who have personal

45. Squires, *supra* note 7.
46. Squires, *supra* note 7.
47. Squires, *supra* note 7.
48. Squires, *supra* note 7.
49. Squires, *supra* note 7.
50. Squires, *supra* note 7.
51. Michelle Singletary, *Payday Loans: Costly Cash*, WASH. POST (Feb. 25, 2007), http://www.washingtonpost.com/wp-dyn/content/article/2007/02/24/AR2007022400098.html.
52. *Id.*
53. Nisa Islam Muhammad, *Payday loans squeeze millions in fees from Blacks and Latinos*, LOUISIANA WEEKLY (July 13, 2009), http://www.louisianaweekly.com/news.php?viewStory=1545.
54. *Id.*
55. *Id.*

checking accounts, but who are stretched to the limit financially."[56] "These consumers are not even living paycheck to paycheck, but are borrowing against their next paycheck to meet living expenses."[57] In 1998, "Ace Cash Express' Vice President [said] payday loan customers 'tend to be people at the bottom of the middle-class structure in this country.'"[58]

Payday loan borrowers are two and a half times more likely to be African American than white.[59] Of the nearly 19 million American payday loan borrowers, 12 million engaged in multiple transactions a year, and the typical loan borrower paid $800 for a $300 loan.[60] Sadly, almost half of borrowers "take out their next loan within one day of paying off the previous loan."[61]

By 2009, "only fifteen states and the District of Columbia [had] legislated caps on various amounts."[62] Additionally, "Congress passed a 36 percent cap in 2006 to protect active members of the military after the Pentagon testified that payday loans were affecting military readiness."[63]

C. *Discriminatory Practices in Car Financing*

i. Dealer Reserves

In 2007, auto finance companies brought "a large group of class actions alleging racial discrimination under the Equal Credit Opportunity Act."[64] In those cases, it was alleged that the "auto dealers set a 'dealer reserve' by marking up the 'buy rate' set by finance companies which purchased their retail installment contracts . . . in a racially discriminatory way."[65] "A dealer reserve is a kickback paid to car dealerships by the finance companies . . . for bringing in new customers."[66] "Dealer reserve can be defined as interest points that usually constitute two to four interest points added to the interest rate, and can tack

56. Jean Ann Fox, *The Growth of Legal Loan Sharking: A Report on the Payday Loan Industry*, CONSUMER FEDERATION OF AMERICA, 5 (Nov. 1998), http://www.consumerfed.org/pdfs/The_Growth_of_Legal_Loan_Sharking_1998.pdf.

57. *Id.*

58. *Id.*

59. NAACP, *Economic Justice Toolkit*, 46 (Summer 2010), http://naacp.3cdn.net/7ec67dbb5d3e89a083_wkm6vt3dt.pdf.

60. Id.

61. *Id.*

62. Muhammad, http://www.louisianaweekly.com/news.php?viewStory=1545 (last visited Mar. 23, 2011).

63. *Id.*

64. John L. Ropiequet, *Racial Discrimination Claims in Current Mortgage and Auto Finance Litigation: The Song Remains the Same*, 63 CONSUMER FIN. L. Q. REP. 156, 156 (2009).

65. *Id.*

66. Auto Loans: Dealer Reserve- Kickbacks and Markups, http://www.bcsalliance.com/auto_financing_kickbacks.html (last visited Mar. 23, 2011).

on thousands of dollars to the price of a car and increase one's monthly payments."[67] Typically, the car manufacturer "offers to finance someone's new car purchase for 15%, but the car dealer does not tell the customer" the information provided by the car manufacturer.[68] Instead, the car dealer tells the customer that "the lowest interest rate he qualifies for is 19%."[69] This creates a dealer reserve. The car manufacturer then "sends a check equal to the 4% markup to the dealership as a commission."[70] The unsuspecting customer gets a higher interest rate without realizing he even qualified for a lower rate.[71] The Center for Responsible Lending estimates that this practice "cost[s] car buyers more than twenty billion dollars a year."[72]

Raising the finance charge for the dealer's profit is "perfectly legal conduct."[73] When it comes to auto financing, there is no law against keeping hidden finance charges hidden.[74] Dealers argue that their "finance managers have the right to earn a commission on helping customers obtain financing, and the average dealer reserve adds $850 to the price of a car."[75] "Members of minority groups and those with low incomes, whom the auto industry calls the 'less fortunates,' are more likely to pay dealer reserves.[76] A study of the auto industry by Raj Date and Brian Reed revealed that "dealers routinely get incentive payments for steering customers toward particular lenders, and sometimes use the financing process to tack on additional fees."[77]

ii. Buy Here, Pay Here

In 2000, "one out of five African-American households lack[ed] a car, compared to [o]ne out of ten households among Hispanics and

67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.*
71. *Id.*
72. James Surowiecki, *Masters of Main Street*, THE NEW YORKER (July 12, 2010), http://www.newyorker.com/talk/financial/2010/07/12/100712ta_talk_surowiecki.
73. Perino v. Mercury Finance Co. of Illinois, 912 F. Supp. 313, 316 (N.D. Ill. 1995); *See also* Eugene J. Kelley, Jr., John L. Ropiequiet & Anna-Katrina S. Christakis, *APR Splits: Still Legal After All These Years*, 56 CONSUMER FIN. L.Q. REP. 296, 303 (2002) ("Thus it seems clear from both the 'old' and the 'new' cases that, without more, APR splits are perfectly legal." An APR split is analogous to a dealer reserve.).
74. Diana B. Henriques, *HIDDEN CHARGES: A special report.; Extra Costs on Cars Loans Draw Lawsuits*, N.Y. TIMES (Oct. 27, 2000), http://www.nytimes.com/2000/10/27/us/hidden-charges-a-special-report-extra-costs-on-car-loans-draw-lawsuits.html?pagewanted=4&src=PM.
75. Auto Loans: Dealer Reserve- Kickbacks and Markups, http://www.bcsalliance.com/auto_financing_kickbacks.html (last visited Mar. 23, 2011).
76. *Id.*
77. James Surowiecki, *Masters of Main Street*, THE NEW YORKER (July 12, 2010), http://www.newyorker.com/talk/financial/2010/07/12/100712ta_talk_surowiecki#ixzz11hogHuzP.

only 3.3 percent of households among whites."[78] This coupled with the fact that Blacks on average have a longer work commute and spend more money than any other group on transportation expenses explains the reliance on a "by any means necessary" approach to obtaining a car.[79] Buy Here Pay Here (BHPH) financing refers to financing by which a consumer "would arrange a loan and make payments on it at the dealership."[80] The customer purchases the car through what is "referred to as in-house financing versus [financing] through a third party, such as a bank."[81] "BHPH dealerships are primarily designed for [car] shoppers who may have experienced significant financial bumps and bruises."[82] Consumers with bad credit scores or who have had trouble getting an auto loan turn to BHPH dealers.[83] "Instead of making monthly payments to a traditional lender," the consumer makes "weekly or bi-weekly payments" directly to the dealer; many require that debtors "physically bring a check or cash to their location," hence the term "buy here pay here."[84] The average annual percentage rate of interest (APR) on a BHPH loan is much higher than traditional auto financing, and as a result "BHPH dealers expect much higher default and repossession rates."[85] "Instead of responsibly financing affordable cars, the business model" of BHPH dealers depends on spitting out the same vehicles to victims as many times as possible.[86] BHPH "[d]ealers usually require a disproportionate percentage of the car's actual value for down payment and pack the loan with unnecessary fees to make more money up front."[87]

78. Anne Kim, *Taken for a Ride: Subprime Lenders, Automobility, and the Working Poor*, PROGRESSIVE POLICY INSTITUTE, 3 (Nov. 2002), http://www.dlc.org/documents/Automobility_1102.pdf.

79. *Id.*

80. Jon Acuff, *Buy Here Pay Here Financing Basic*, http://www.autotrader.com/credit center/credit/article-25356/buy-here-pay-here-financing-basics.jsp (last visited Mar. 23, 2011).

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. CTR. FOR RESPONSIBLE LENDING, *Signs of Predatory Auto Loans*, http://www.responsi blelending.org/other-consumer-loans/auto-financing/tools-resources/signs-of-predatory-auto-loans.html (last visited Mar. 23, 2011) (The annual percentage rate (APR) refers to the interest rate for a whole year as applied on a loan. It is a finance charge expressed as an annual rate. *See* Annual Percentage Rate, http://www.investopedia.com/terms/a/apr.asp) (last visited Apr. 14, 2011)).

86. *Id.*

87. *Id.*

III. New Regulations - Dodd-Frank Wall Street Reform and Consumer Protection Act

A. *Office of Minority and Women Inclusion*

As part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), "each of the thirty federal financial agencies and departments" are now required "to establish an Office of Minority and Women Inclusion" to jumpstart the hiring of and contracting opportunities for minorities and women.[88] The Dodd-Frank Act provides for the assessment of diversity policies and practices of regulated companies.[89] It also gives the director of each office the authority to develop standards for equal employment for their agency as well as at the companies they regulate and contract with for services.[90] However, the "directors of the new offices [will] have only limited enforcement power;" while they will have the power to "recommend to the agency's head that a contract be terminated or refer a case to the Labor Department for sanctions," they are without the power to "force any action."[91] Along with the Office of Small and Disadvantaged Business Utilization, the Equal Employment Opportunity Commission, and the Labor Department's Office of Federal Contract Compliance Programs, the new office will help to ensure that there is a level playing field.[92]

"The House Financial Services Committee added the provision" because of the "limited participation by firms owned by women or minorities in emergency programs undertaken by the Treasury Department and the Federal Reserve to address the [2008] financial crisis."[93] Congress found "federal data showing that women made up 44.2% of the federal workforce in 2006, and minorities 28.3%."[94] "Some financial regulatory positions had lower figures: Just 35% of financial institution examiners were women and 18.7% were minorities, according to the Office of Personnel Management."[95] According to a report by the Government Accountability Office, "[i]n 2008, white men held 64% of senior positions in the financial services industry."[96] "According to the provision," the Office of Minority and Wo-

88. Julia Love & Jim Puzzanghera, *Financial Reform Bill Calls for Diversity*, L.A. Times, Aug. 25, 2010, at B1, *available at* http://articles.latimes.com/2010/aug/25/business/la-fi-reform-diversity-20100825-18.

89. *Id.*

90. *Id.*

91. *Id.*

92. *See id.* (outlining U.S. Senator Susan Collins' criticisms of the Office of Minority and Women Inclusion).

93. Love & Puzzanghera, *supra* note 88.

94. *Id.*

95. *Id.*

96. *Id.*

men Inclusion "must 'to the extent consistent with applicable law' consider the diversity of companies seeking contract work and, in some cases, their subcontractors."[97] "The provision applies to 'all contracts of an agency for services of any kind' but specifically cites financial services such as asset management and programs dealing with economic recovery."[98]

B. *Consumer Protections*

> Part of what this agency will be doing is trying to rein in some of the practices that banks currently engage in that make participating in the regular banking system distasteful to a lot of African Americans, such as enforcing the rule that stops banks from enrolling customers in expensive overdraft programs. There will be a push to get more households to be in the regular banking system[.][99]

The sweeping new financial regulations include the creation of the Consumer Financial Protection Agency (CFPA), which "will offer more transparency and better safeguard Americans from dubious practices in banking and other related institutions."[100] This new consumer agency acts as an independent regulator and is housed within the Federal Reserve.[101] The CFPA will "consolidate oversight of a wide variety of financial products, including mortgages, credit cards and payday loans."[102] While these areas were strewn across a variety of government agencies, "creating a single supervisor [may] help make financial products easier to understand," leading to fewer abuses against under-informed borrowers.[103] Under the CFPA, financial institutions will be held more accountable, "help[ing] shield black residents from greedy check cashing centers that charge as much as twenty percent to cash checks for customers."[104]

"Recent studies show that nearly one-third of African-Americans with bank accounts also use check cashing centers, and one in five black households [do not] have bank accounts."[105] The CFPA will not only have "'oversight over traditional banks, but for the first time have oversight [over] alternative-financial services, such as check

97. *Id.*
98. *Id.*
99. Levister, *supra* note 4.
100. Michael H. Cottman, *Analysis: Financial Reform Good News for Blacks*, BLACK AMERICAWEB (July 16, 2010, 5:36 AM), http://www.blackamericaweb.com/?q=articles/news/baw_commentary_news/20321.
101. 12 U.S.C.A. § 5491 (2011).
102. Dalia Fahmy, *Top Six Changes that Financial Reform Brings to Consumers*, ABC NEWS (June 25, 2010), http://abcnews.go.com/Business/article/financial-reform-bill-means-big-consumers/story?id=11012343.
103. *Id.*
104. Cottman, *supra* note 100.
105. *Id.*

cashier and payday lenders, [to help] families avoid those hidden costs, hidden fees and exorbitant costs.'"[106]

Credit card companies have also made an enormous profit off of the African Americans; Austan Goolsbee, a senior economic advisor for the Obama administration, said "[t]here have been misleading and abusive practices with credit card companies that made twenty five billion dollars a year from penalty fees, . . . so they turned sneaky practices into a business model."[107] Because of the CFPA, many financial documents for consumers will be simplified: hidden fees such as bank overdraft charges will be uncovered and consumers will better understand their rights.[108] The regulation "will also increase consumer protection against lending abuses."[109]

C. *Mortgage Lending*

> African Americans, along with other low-income individuals, were the canary in the coal mines. . . . They were the ones that the companies were making the most money off of and [they were] going after [them] in a way that was irresponsible.[110]

As a result of financial reform legislation, "consumers with adjustable-rate mortgages and other complicated mortgage products [will] no longer have to pay pre-payment penalties" for paying off a mortgage early.[111] African Americans will benefit principally because, traditionally, they were disproportionately targeted with complicated mortgage products like adjustable-rate mortgages (ARMs). In the years leading up to the financial meltdown, more than half of the loans granted to African Americans were subprime.[112] In fact, African Americans "were three times more likely to receive higher-priced loans than whites."[113] "[I]n sworn affidavits contained in lawsuits filed against Wells Fargo, loan officers wrote that they were ordered to push home loans in Black churches, conduct seminars in low income neighborhoods and referred [sic] to Black people as 'mud people' who don't pay their bills and to the subprime loans they sold them as 'ghetto loans.'"[114] Prior to the reform measures, "consumers [paid] penalties

106. Levister, *supra* note 4.
107. Cottman, *supra* note 100.
108. Cottman, *supra* note 100.
109. Cottman, *supra* note 100.
110. Levister, *supra* note 4 (quoting Dr. Cecilia Rouse, member of the White House Council of Economic Advisors).
111. Fahmy, *supra* note 102 (Adjustable-rate mortgages (ARMs) refer to home loans where the initial loan payments are usually lower than a fixed rate mortgage but adjust upwards thereafter. They are usually subject to a cap. *See* Mortgage Daily News, http://www.mortgagenewsdaily.com/wiki/Adjustable_Rate_Mortgage_Definition.asp (last visited Apr. 14, 2011)).
112. Levister, *supra* note 4.
113. Levister, *supra* note 4.
114. Levister, *supra* note 4.

that [made] it more expensive — and sometimes impossible — . . . to switch out of their loans if they [felt] they have been given a bad deal," giving lenders an incentive to sell iniquitous ARMs.[115] This is perhaps why "more than fifty seven percent of the subprime loans granted in 2006 are in foreclosure or pre-foreclosure."[116]

D. *Auto Financing*

Automobile financing which comes under the auspices of the Federal Trade Commission (FTC), will require financers to follow new rules designed to protect car buyers.[117] "The FTC has been given more powers to 'develop and enforce new rules to protect consumers from unfair and abusive auto financing transactions,' according to the Consumers Union."[118] This could mean the end of discriminatory "dealer reserves."

The Dodd-Frank Act "authorizes the FTC to use the same rulemaking procedures for dealers as other federal agencies use generally."[119] This procedural shift "will reduce the FTC's rulemaking to around one year, compared to an average seven years under its traditional rulemaking procedures."[120] Such a lengthy rulemaking process has "discouraged the FTC from rulemaking in the past."[121] "The change could mean that dealers will face stronger and faster regulation than had they been placed under the CFPB, which must focus on many areas of consumer protection, as well as establish itself as a new autonomous body within the Federal Reserve."[122] The Act preserves dealer-assisted financing and "gives the CFPB authority only over dealers who make direct loans to consumers and who [do not] traditionally transfer their loans to third parties, as most dealers do."[123] However, BHPH dealers, with their "reputation for selling old, cheap cars at high markups" and with ridiculously high interest rates to African Americans and other minority groups, come under the new legislation and face reforms.[124] BHPH dealers "will not be able to avoid the jurisdiction of the CFPB by selling their [loans] to their own re-

115. Fahmy, *supra* note 102.
116. Levister, *supra* note 4.
117. Fahmy, *supra* note 102.
118. Fahmy, *supra* note 102.
119. Wendy Conklin, *Most auto loans avoid CFPB rules, but may face tougher FTC scrutiny*, FINANCIAL WEB GUIDE (July 21, 2010), http://www.financial-webguide.com/financial-news/most-auto-loans-avoid-cfpb-rules-but-may-face-tougher-ftc-scrutiny.
120. *Id.*
121. *Id.*
122. *Id.*
123. *Id.*
124. Saul Hansell, *A Surge in Second Second-Chance Finance,* N.Y. TIMES (Mar. 17, 1996), http://query.nytimes.com/gst/fullpage.html?res=9C0CEED71639F934A25750C0A960958260&pagewanted=all.

lated finance company, which is the structure that many of them use."[125]

IV. Conclusion

While the financial reform measures make great strides, more work still needs to be done. African Americans need broader access to mainstream credit. No longer should they be the primary targets of predatory and alternative lending practices. And while the Dodd-Frank Act is broad and far-reaching, more regulation is still needed to eradicate unfair trade practices to vulnerable consumers.

African Americans must be a part of the process if they are to be a part of the solution. Thus, these newly created new minority inclusion offices must be properly funded and staffed. As intended in the Dodd-Frank Act, they should be given genuine authority to require federal agencies to give meaningful consideration to the promotion of diversity in their work forces and their own business practices. The federal government should be fair to African Americans in the contracts they award and their procurement practices.

There must be a greater emphasis placed on financial literacy education so that African American consumers can become savvier and more easily discover unfair or unscrupulous terms in finance agreements. Moreover, African American car buyers who are trying to rebuild their credit should not be left out to dry. BHPH lenders should be required to report good payment history to the major credit bureaus. Finally, check cashing fees and pay day loan interest rates should be heavily regulated and reduced because African Americans already spend more than any other group for these services and on average earn less.

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125. Nick Zulovich, *NAF Association Asks Hudson Cook Partners to Decipher Wall Street Reform's Impact on Lenders, Dealers*, Subprime Auto Finance News (July 22, 2010), http://www.subprimenews.com/spn/news/story.html?id=1537 (quoting Hudson Cook law firm partner Michael Benoit).